

CITY COUNCIL
ATLANTA, GEORGIA

04-*R*-0796

A RESOLUTION

BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS IN THE CASE OF BOULEVARD LAND COMPANY, LLC AND HARVEST MORTGAGE CO., INC. V. CITY OF ATLANTA; CIVIL ACTION FILE NO. 2002CV50535; AND FOR OTHER PURPOSES.

BACKGROUND:

The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc. filed a lawsuit against the City in the Superior Court of Fulton County, Georgia on March 21, 2002, styled The Boulevard Land Company, LLC and Harvest Mortgage Company, Inc. v. The City of Atlanta, Fulton County Superior Court, Civil Action File Number: 2002 CV 50535-BT (the "Lawsuit"); and

This action was brought by them to resolve problems with the City regarding permitting for a sewer tap and certificate of occupancy of a single family home constructed by Plaintiffs on Land Lot 53, 14th District, of Fulton County, otherwise known as 239 Glenwood Avenue; and

The Plaintiffs obtained the necessary building permit from the City to construct the home; and

Following the substantial completion of the home, the presence of an existing approximately 100 year old sewer line bisecting the property and running underneath the home was discovered; and

Due to the sewer line running beneath the home, the City refused to issue Plaintiffs a sewer tap permit or a certificate of occupancy; and

The Plaintiffs are, accordingly, unable to market or sell the home without obtaining a sewer tap permit or certificate of occupancy; and

The Plaintiffs or owner of the property have agreed to relocate the home, at their expense, to a location on the property that does not encroach upon the sewer line; and

The relocation of the home on the property so as not to encroach upon the sewer line would require a zoning variance from the Board of Zoning Adjustment; and

The Plaintiffs have submitted an application for a zoning variance that was approved during a hearing held on February 20, 2004 (a copy of the letter granting such approval is attached as Exhibit 1); and



The Plaintiffs and the City desire to compromise and settle all claims which have been asserted between them by entering into a Settlement Agreement in which:

- 1) Plaintiffs agree to relocate the house on the parcel in accordance with the drawing attached as Exhibit 2, such that the house no longer encroaches upon the sewer line;
- 2) An Easement for the sewer line is granted by the appropriate Plaintiff for the purpose of evidencing the property owner's consent to the existence of the sewer line on the parcel and allowing the City to operate, maintain and repair such sewer line, on such terms and conditions as the parties may additionally agree to include in the Easement;
- 3) The City will issue a sewer tap permit, a certificate of occupancy, and any other permits or certificates necessary to allow the home to be moved and occupied, assuming compliance with other relevant City Code Sections; and
- 4) Plaintiffs will release the City from all liability arising from the Lawsuit and the facts asserted or which could have been asserted in the Lawsuit.
- 5) The City will release Plaintiffs from all liability arising from the Lawsuit and the facts asserted or which could have been asserted in the Lawsuit as counter claims.

BE IT HEREBY RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA that the City Attorney is authorized to execute, on behalf of the City, a Settlement Agreement containing the terms set forth in this Resolution and any other terms the City Attorney deems appropriate to consummate the settlement of the Lawsuit in order to fully compromise and settle all claims that have been or may be asserted between The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc. and the City in the Lawsuit.

BE IT FURTHER RESOLVED that the Mayor is authorized, if deemed appropriate by the City Attorney, to execute an Easement Agreement with respect to the granting to the City by the appropriate Plaintiff of an Easement for the sewer line intersecting the parcel at issue in the Lawsuit;

BE IT FURTHER RESOLVED that the Settlement Agreement and Easement Agreement, if deemed appropriate to be executed by the City, will not become binding on the City until it/they has/have been executed by The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc., approved by the City Attorney as to form, executed by the City Attorney or Mayor, as appropriate, attested by the Municipal Clerk, delivered to The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc., and the City has received from The Boulevard Land Company, LLC and Harvest Mortgage Co., Inc. a dismissal of the Lawsuit with prejudice filed with the Clerk of the Superior Court of Fulton County.

A true copy,

Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

MAY 03, 2004
MAY 05, 2004

FEB 27 '04 12:42 FROM: HARVEST MORTGAGE

770-396-0585

T-523 P.02/02 F-823

SHIRLEY FRANKLIN
MAYORCITY OF ATLANTA
55 TRINITY AVENUE, S.W. SUITE 3350 - ATLANTA, GEORGIA 30335
404-330-6145 - FAX: 404-658-7491
Internet Home Page: www.ci.atlanta.ga.usDEPARTMENT OF PLANNING
AND COMMUNITY
DEVELOPMENTCharles Graves
CommissionerBeverly Dockeray-Ojo
Director,
Bureau of Planning

February 23, 2004

The Boulevard Land Company
C/o Harvest Mortgage Company
Parkway Center, Suite 130
1800 Parkway Place
Marietta, GA 30067

Dear Applicant:

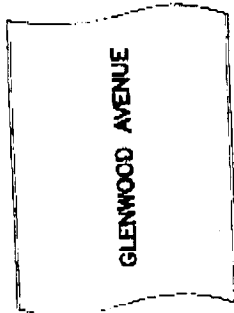
V-03-408 Application of The Boulevard Land Company, LLC by Joanne Brown Williams, Esq. for a variance from the zoning regulations to reduce the rear yard setback from the required 7 feet to 1 foot, 6 inches, to relocate an existing single-family, detached house. Property is located at **239 GLENWOOD AVENUE, S.E.**, and fronts 48 feet on the south side of Glenwood Avenue, beginning 105 feet from the southwest corner of Glenwood Avenue and Hill Street. Zoned HD-20K/R-5 (Grant Park Historic District/Two-Family Residential District). Land Lot 53 of the 14th District, Fulton County, Georgia.
Owner: The Boulevard Land Company, LLC
Council District 1, NPU-W

As a result of a public hearing held on February 20, 2004, the Board of Zoning Adjustment approved the above referenced application.

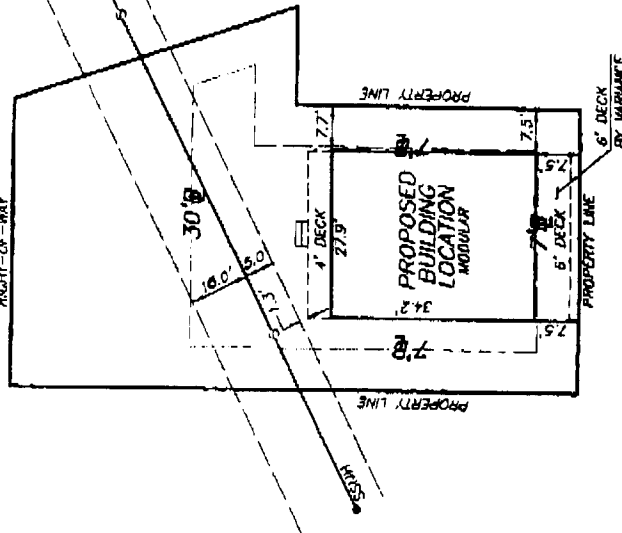
Sincerely,

Melora L. Furman, Secretary to the
Board of Zoning Adjustment

MLF:lh



RIGHT-OF-WAY
30' @
16.0' 5.0'
30' @
16.0' 5.0'
30' @
16.0' 5.0'



TOTAL AREA= 0.113 ACRES
239 GLENWOOD AVENUE
ATLANTA, GEORGIA

McLUNG

SURVEYING SERVICES, INC.

2235 Cooper Lake Road, S.E.
Smyrna, Georgia 30080 (770) 434-3343

PROPOSED HOUSE RELOCATION FOR

BOULEVARD LAND COMPANY

PART OF LOTS 4 & 5
ENBING-BENSON & MILLIAN PROPERTY

LAND LOT 53
DISTRICT 14TH
COUNTY FULTON
GEORGIA

DATE: 9-9-03 SCALE: 1"=20'

DATE: 9-9-03 SCALE: 1"=20'

DATE: 9-9-03 SCALE: 1"=20'

EXHIBIT

SURVEY NOTES

1. STORM SEWER, SANITARY SEWER AND OTHER BURIED UTILITIES HAVE BEEN IMAGED OR COVERED OVER. THE LOCATION OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVE GROUND STRUCTURES AND RECORD DRAWINGS PROVIDED TO THE SURVEYOR. LOCATIONS OF UTILITIES MAY BE DIFFERENT FROM THE LOCATIONS SHOWN HEREON. BURIED UTILITIES MAY BE LOCATED BY EXCAVATING WORK. MAKE SURE THE LOCATION OF THE UTILITY TO LOCATE BURIED UTILITIES. BEFORE EXCAVATIONS ARE BEGUN, CALL THE UTILITIES LOCATION CENTER FOR ADDITIONAL INFORMATION.

2. THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSONS WHOSE INTERESTS ARE SHOWN HEREON. THIS PLAT DOES NOT CONSTITUTE A WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, BY THE SURVEYOR OR ANY OTHER PERSON, PERSONS OR ENTITY.

3. THE SURVEYOR HAS MADE NO INVESTIGATION OR RESEARCH FOR THE PURPOSES OF RECORD, ENCUMBRANCES, EASEMENTS, INTERESTS, OWNERSHIP, TITLE, OR ANY OTHER MATTER THAT A COURT OF LAW COULD BE HELD TO.

4. THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSONS WHOSE INTERESTS ARE SHOWN HEREON. THIS PLAT DOES NOT CONSTITUTE A WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, BY THE SURVEYOR OR ANY OTHER PERSON, PERSONS OR ENTITY.



The Plaintiffs and the City desire to compromise and settle all claims which have been asserted between them by entering into a Settlement Agreement in which:

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04-0796
(Do Not Write Above This Line)

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PURPOSES.

Robert Ruben Newell
JERRY L. DELOACH
DEPUTY CITY ATTORNEY

ADOPTED BY

MAY 3 2004

COUNCIL

- ☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER
☐ PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

P.S. Committee

April 27, 2004

Chair

Action
Fav, Adv, Hold (see rev. side)
Other

Members

Steve Hernandez

Harry Smith

Debra Hirschman

Carla Smith

Refer To

Committee

Date

Chair

Action
Fav, Adv, Hold (see rev. side)
Other

Members

Committee

Date

Chair

Action
Fav, Adv, Hold (see rev. side)
Other

Members

Refer To

Committee

Date

Chair

Action
Fav, Adv, Hold (see rev. side)
Other

Members

FINAL COUNCIL ACTION

☐ 2nd

☐ 1st & 2nd

☐ 3rd

☒ Consent

☐ V Vote

☒ RC Vote

CERTIFIED

CERTIFIED
MAY 3 2004

David Henderson
CITY PRESIDENT PROTEM

CERTIFIED
MAY 3 2004

David Henderson
CITY PRESIDENT PROTEM

APPROVED

MAY 05 2004

Michael Hancock
MAYOR